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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 BELINDA HOESSLI, an individual and
12 as guardian ad litem for R.H., a minor.

13 Plaintiffs,

14 v.

15 COUNTY OF SAN BERNARDINO,
16 KIMBERLY WILLIAMSON, KEITH
17 KOLLMAN, FRED JEFFERSON
18 MEMORIAL FOSTER FAMILY
19 AGENCY, CRYSTAL ANN BROWN,
20 and Does 1 through 10, inclusive,

21 Defendants.

Case No. 5:18-cv-1232-JLS (KKx)

**ORDER TO ON STIPULATION
FOR ENTRY OF PROTECTIVE
ORDER GOVERNING
PRODUCTION OF
“CONFIDENTIAL
INFORMATION”**

22 **I. PURPOSE AND LIMITATIONS**

23 Discovery in this action is likely to involve production of confidential or
24 private information for which special protection from public disclosure and from use
25 for any purpose other than prosecuting this litigation may be warranted.
26 Accordingly, the parties hereby stipulate to and petition the Court to enter the
27 following Stipulated Protective Order (hereafter “this Order”). The parties
28 acknowledge that this Order does not confer blanket protections on all disclosures or
responses to discovery and that the protection it affords from public disclosure and
use extends only to the limited information or items that are entitled to confidential

1 treatment under the applicable legal principles.

2 **II. GOOD CAUSE STATEMENT**

3 This action is likely to involve confidential information derived from
4 personnel records, investigatory documents, and other materials subject to privacy
5 protections for which special protection from public disclosure and from use for any
6 purpose other than prosecution of this action is warranted. Limiting disclosure of
7 these documents to the context of this litigation as provided herein will, accordingly,
8 further important law enforcement objectives and interests, including the safety of
9 personnel and the public, as well as individual privacy rights of plaintiff, the
10 individual defendants, and third parties. Such confidential materials and
11 information consist of, among other things, materials entitled to privileges and/or
12 protections under the following: the United States Constitution, First Amendment;
13 the California Constitution, Article I, Section 1; California *Penal Code* §§ 832.5,
14 832.7, and 832.8; California *Evidence Code* §§ 1040 and 1043 *et seq.*; the Privacy
15 Act of 1974, 5 U.S.C. § 552a; Health Insurance Portability and Accountability Act
16 of 1996 (HIPAA), Public Law 104-191, decisional law relating to such provisions;
17 and information otherwise generally unavailable to the public, or which may be
18 privileged or otherwise protected from disclosure under state or federal statutes,
19 court rules, case decisions, or common law. Defendants also contend that such
20 confidential materials and information consist of materials entitled to the Official
21 Information Privilege.

22 Confidential information with respect to the Defendants may include but is
23 not be limited to: personnel files; internal investigative files and documents; email
24 and written correspondence records; and policies and procedures that are kept from
25 the public in the ordinary course of business, as well as other items subject to the
26 Official Information Privilege and other privileges. Confidential information with
27 respect to Plaintiffs may include: employment and financial records along with
28 psychological and medical notes, evaluations, reports, and treatment plans.

1 The parties reserve the right to challenge a designation of confidentiality
2 pursuant to the terms set forth under Paragraph 8 of this Order.

3 Accordingly, to expedite the flow of information, to facilitate the prompt
4 resolution of disputes over confidentiality of discovery materials, to adequately
5 protect information the parties are entitled to keep confidential, to ensure that the
6 parties are permitted to reasonably use such material in preparation for and in
7 conduct of trial, to address their handling at the end of the litigation, and serve the
8 ends of justice, a protective order for such information is justified in this matter. It
9 is the intent of the parties that information will not be designated as confidential for
10 tactical reasons and that nothing be so designated without a good faith belief that it
11 has been maintained in a confidential, non-public manner, and there is good cause
12 why it should not be part of the public record of this case.

13 **III. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER**
14 **SEAL**

15 The parties further acknowledge, as set forth in Section 14.3, below, that this
16 Order does not entitle them to file confidential information under seal; Local Civil
17 Rule 79-5 sets forth the procedures that must be followed and the standards that will
18 be applied when a party seeks permission from the court to file material under seal.

19 There is a strong presumption that the public has a right of access to judicial
20 proceedings and records in civil cases. In connection with non-dispositive motions,
21 good cause must be shown to support a filing under seal. *See Kamakana v. City and*
22 *County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen. Motors*
23 *Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony Electronics,*
24 *Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders
25 require good cause showing), and a specific showing of good cause or compelling
26 reasons with proper evidentiary support and legal justification, must be made with
27 respect to material that a party seeks to file under seal. The parties' mere
28 designation of material as "CONFIDENTIAL" does not— without the submission

1 of competent evidence by declaration, establishing that the material sought to be
2 filed under seal qualifies as confidential, privileged, or otherwise protectable—
3 constitute good cause. Further, if a party requests sealing related to dispositive
4 motion or trial, then compelling reasons, not only good cause, for the sealing must
5 be shown, and the relief sought shall be narrowly tailored to serve the specific
6 interest to be protected. *See Pintos v. Pacific Creditors Ass’n*, 605 F.3d 665, 677-79
7 (9th Cir. 2010). For each item or type of information, document, or thing sought to
8 be filed or introduced under seal in connection with a dispositive motion or trial, the
9 party seeking protection must articulate compelling reasons, supported by specific
10 facts and legal justification, for the requested sealing order. Again, competent
11 evidence supporting the application to file documents under seal must be provided
12 by declaration.

13 Any document that is not confidential, privileged, or otherwise protectable in
14 its entirety will not be filed under seal if the confidential portions can be redacted.
15 If documents can be redacted, then a redacted version for public viewing, omitting
16 only the confidential, privileged, or otherwise protectable portions of the document,
17 shall be filed. Any application that seeks to file documents under seal in their
18 entirety should include an explanation of why redaction is not feasible.

19 **IV. DEFINITIONS**

20 4.1 Action: *Hoessli v. County of San Bernardino, et al.*, Case No. 5:18-cv-
21 1232- JLS.

22 4.2 Challenging Party: a Party or Non-Party that challenges the designation
23 of information or items under this Order.

24 4.3 “CONFIDENTIAL” Information or Items: Information (regardless of
25 the medium or manner in which it is generated, stored, or maintained) or tangible
26 things that qualify for protection under *Federal Rule of Civil Procedure* 26(c), and
27 as specified above in the Good Cause Statement.

28 4.4 Counsel: General Counsel of Record and House Counsel (as well as

1 their support staff).

2 4.5 Designating Party: a Party or Non-Party that designated information or
3 items that it produces in disclosures or in responses to discovery as
4 “CONFIDENTIAL.”

5 4.6 Disclosure or Discovery Material: all items or information, regardless
6 of the medium or manner in which it is generated, stored, or maintained (including,
7 among other things, testimony, transcripts, and tangible things), that are produced or
8 generated in disclosures or responses to discovery in this matter.

9 4.7 Expert: a person with specialized knowledge or experience in a matter
10 pertinent to the litigation who has been retained by a Party or its counsel to serve as
11 an expert witness or as a consultant in this Action.

12 4.8 House Counsel: attorneys who are employees of a party to this Action.
13 House Counsel does not include General Counsel of Record or any other outside
14 counsel.

15 4.9 Non-Party: any natural person, partnership, corporation, association or
16 other legal entity not named as a Party to this action.

17 4.10 General Counsel of Record: attorneys who are not employees of a
18 party to this Action but are retained to represent or advice a party to this Action and
19 have appeared in this Action on behalf of that party or are affiliated with a law firm
20 that has appeared on behalf of that party, as well as their support staff.

21 4.11 Party: any party to this Action, including all of its officers, directors,
22 employees, consultants, retained experts, and General Counsel of Record (and their
23 support staffs).

24 4.12 Producing Party: a Party or Non-Party that makes a Disclosure or
25 produces Discovery Material in this Action.

26 4.13 Professional Vendors: persons or entities that provide litigation
27 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
28 demonstrations, and organizing, storing, or retrieving data in any form or medium)

1 and their employees and subcontractors.

2 4.14 Protected Material: any Disclosure or Discovery Material that is
3 designated as “CONFIDENTIAL.”

4 4.15 Producing Party: a Party that makes a Disclosure or produces
5 Discovery Material to the Receiving Party.

6 4.15 Receiving Party: a Party that receives a Disclosure or Discovery
7 Material from a Producing Party.

8 **V. SCOPE**

9 The protections conferred by this Stipulation and Order cover not only
10 Protected Material (as defined above), but also (1) any information copied or
11 extracted from Protected Material; (2) all copies, excerpts, summaries, or
12 compilations of Protected Material; and (3) any testimony, conversations, or
13 presentations by Parties or their Counsel (as defined by Sections 4.8 and 4.10) that
14 might reveal Protected Material.

15 Any use of Protected Material at trial shall be governed by the orders of the
16 trial judge. This Order does not govern the use of Protected Material at trial.

17 **VI. DURATION**

18 Once a case proceeds to trial, information that was designated as
19 “CONFIDENTIAL” or maintained pursuant to this protective order used or
20 introduced as an exhibit at trial becomes public and will be presumptively available
21 to all members of the public, including the press, unless compelling reasons
22 supported by specific factual findings to proceed otherwise are made to the trial
23 judge in advance of the trial. *See Kamakana*, 447 F.3d at 1180-81 (distinguishing
24 “good cause” showing for sealing documents produced in discovery from
25 “compelling reasons” standard when merits-related documents are part of court
26 record). Accordingly, the terms of this protective order do not extend beyond the
27 commencement of the trial.

VII. DESIGNATING PROTECTED MATERIAL

7.1 Exercise of Restraint and Care in Designating Material for Protection.

Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items or oral or written communications that qualify so that other portions of the material, documents, items or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber the case development process or to impose unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the inapplicable designation.

7.2 Manner and Timing of Designations.

Except as otherwise provided in this Order (see, e.g., second paragraph of section 7.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that contains protected material. If only a portion of the material on a page qualifies for

1 protection, the Producing Party also must clearly identify the protected portion(s)
2 (e.g., by making appropriate markings in the margins).

3 A Party or Non-Party that makes original documents available for inspection
4 need not designate them for protection until after the inspecting Party has indicated
5 which documents it would like copied and produced. During the inspection and
6 before the designation, all of the material made available for inspection shall be
7 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
8 documents it wants copied and produced, the Producing Party must determine which
9 documents, or portions thereof, qualify for protection under this Order. Then,
10 before producing the specified documents, the Producing Party must affix the
11 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
12 portion of the material on a page qualifies for protection, the Producing Party also
13 must clearly identify the protected portion(s) (e.g., by making appropriate markings
14 in the margins).

15 (b) for testimony given in depositions that the Designating Party identifies
16 the Disclosure or Discovery Material on the record, before the close of the
17 deposition all protected testimony.

18 (c) for information produced in some form other than documentary and for
19 any other tangible items, that the Producing Party affix in a prominent place on the
20 exterior of the container or containers in which the information is stored the legend
21 “CONFIDENTIAL.” If only a portion or portions of the information warrants
22 protection, the Producing Party, to the extent practicable, shall identify the protected
23 portion(s).

24 7.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
25 failure to designate qualified information or items does not, standing alone, waive
26 the Designating Party’s right to secure protection under this Order for such material.
27 Upon timely correction of a designation, the Receiving Party must make reasonable
28 efforts to assure that the material is treated in accordance with the provisions of this

1 Order.

2 **VII. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

3 8.1 Timing of Challenges. Any Party or Non-Party may challenge a
4 designation of confidentiality at any time that is consistent with the Court's
5 Scheduling Order.

6 8.2 Meet and Confer. The Challenging Party shall initiate the meet and
7 confer process outlined in Local Rule 37.1, *et seq.*

8 8.3 Joint Stipulation. Any challenge submitted to the Court shall be via a
9 joint stipulation pursuant to Local Rule 37-2.

10 8.4 The burden of persuasion in any such challenge proceeding shall be on
11 the Designating Party. Frivolous challenges, and those made for an improper
12 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
13 parties) may expose the Challenging Party to sanctions. Unless the Designating
14 Party has waived or withdrawn the confidentiality designation, all parties shall
15 continue to afford the material in question the level of protection to which it is
16 entitled under the Producing Party's designation until the Court rules on the
17 challenge.

18 **IX. ACCESS TO AND USE OF PROTECTED MATERIAL**

19 9.1 Basic Principles. A Receiving Party may use Protected Material that is
20 disclosed or produced by another Party or by a Non-Party in connection with this
21 Action only for prosecuting, defending or attempting to settle this Action. Such
22 Protected Material may be disclosed only to the categories of persons and under the
23 conditions described in this Order. When the Action has been terminated, a
24 Receiving Party must comply with the provisions of Section XV, *infra*.

25 Protected Material must be stored and maintained by a Receiving Party at a
26 location and in a secure manner that ensures that access is limited to the persons
27 authorized under this Order.

28 9.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless

1 otherwise ordered by the court or permitted in writing by the Designating Party, a
2 Receiving Party may disclose any information or item designated
3 “CONFIDENTIAL” only to:

4 (a) the Receiving Party’s General Counsel of Record in this Action, as well
5 as employees of said General Counsel of Record to whom it is reasonably necessary
6 to disclose the information for this Action;

7 (b) the officers, directors, and employees (including House Counsel) of the
8 Receiving Party to whom disclosure is reasonably necessary for this Action;

9 (c) Experts (as defined in this Order) of the Receiving Party to whom
10 disclosure is reasonably necessary for this Action and who have signed the
11 “Acknowledgment and Agreement to Be Bound,” attached and hereafter referred to
12 as “Exhibit A.”

13 (d) the court and its personnel;

14 (e) court reporters and their staff;

15 (f) professional jury or trial consultants, mock jurors, and Professional
16 Vendors to whom disclosure is reasonably necessary for this Action and who have
17 signed Exhibit A.

18 (g) the author or recipient of a document containing the information or a
19 custodian or other person who otherwise possessed or knew the information;

20 (h) during their depositions, witnesses, and attorneys for witnesses, in the
21 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
22 requests that the witness sign Exhibit A; and (2) they will not be permitted to keep
23 any confidential information unless they sign Exhibit A, unless otherwise agreed by
24 the Designating Party or ordered by the court. Pages of transcribed deposition
25 testimony or exhibits to depositions that reveal Protected Material may be separately
26 bound by the court reporter and may not be disclosed to anyone except as permitted
27 under this Order; and

28 (i) any mediator or settlement officer, and their supporting personnel,

1 mutually agreed upon by any of the parties engaged in settlement discussions.

2 **X. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
3 **IN OTHER LITIGATION**

4 If a Party is served with a subpoena or a court order issued in other litigation
5 that compels disclosure of any information or items designated in this Action as
6 “CONFIDENTIAL,” that Party must:

7 (a) promptly notify in writing the Designating Party. Such notification
8 shall include a copy of the subpoena or court order;

9 (b) promptly notify in writing the party who caused the subpoena or order
10 to issue in the other litigation that some or all of the material covered by the
11 subpoena or order is subject to this Order. Such notification shall include a copy of
12 this Order; and

13 (c) cooperate with respect to all reasonable procedures sought to be pursued
14 by the Designating Party whose Protected Material may be affected.

15 If the Designating Party timely seeks a protective order, the Party served with
16 the subpoena or court order shall not produce any information designated in this
17 action as “CONFIDENTIAL” before a determination by the court from which the
18 subpoena or order issued, unless the Party has obtained the Designating Party’s
19 permission. The Designating Party shall bear the burden and expense of seeking
20 protection in that court of its confidential material and nothing in these provisions
21 should be construed as authorizing or encouraging a Receiving Party in this Action
22 to disobey a lawful directive from another court.

23 **XI. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
24 **PRODUCED IN THIS LITIGATION**

25 (a) The terms of this Order are applicable to information produced by a
26 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
27 produced by Non-Parties in connection with this litigation is protected by the
28 remedies and relief provided by this Order. Nothing in these provisions should be

1 construed as prohibiting a Non-Party from seeking additional protections.

2 (b) In the event that a Party is required, by a valid discovery request, to
3 produce a Non-Party's confidential information in its possession, and the Party is
4 subject to an agreement with the Non-Party not to produce the Non-Party's
5 confidential information, then the Party shall:

6 (1) promptly notify in writing the Requesting Party and the Non-Party
7 that some or all of the information requested is subject to a confidentiality
8 agreement with a Non-Party;

9 (2) promptly provide the Non-Party with a copy of this Order in this
10 Action, the relevant discovery request(s), and a reasonably specific description of
11 the information requested; and

12 (3) make the information requested available for inspection by the Non-
13 Party, if requested.

14 (c) If the Non-Party fails to seek a protective order from this court within
15 fourteen (14) days of receiving the notice and accompanying information, the
16 Receiving Party may produce the Non-Party's confidential information responsive
17 to the discovery request. If the Non-Party timely seeks a protective order, the
18 Receiving Party shall not produce any information in its possession or control that is
19 subject to the confidentiality agreement with the Non-Party before a determination
20 by the court. Absent a court order to the contrary, the Non-Party shall bear the
21 burden and expense of seeking protection in this court of its Protected Material.

22 **XII. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

23 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
24 Protected Material to any person or in any circumstance not authorized under this
25 Order, the Receiving Party must immediately (a) notify in writing the Designating
26 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all
27 unauthorized copies of the Protected Material, (c) inform the person or persons to
28 whom unauthorized disclosures were made of all the terms of this Order, and (d)

1 request such person or persons to execute Exhibit A.

2 **XIII. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**

3 **PROTECTED MATERIAL**

4 When a Producing Party gives notice to Receiving Parties that certain
5 inadvertently produced material is subject to a claim of privilege or other protection,
6 the obligations of the Receiving Parties are those set forth in *Federal Rule of Civil*
7 *Procedure* 26(b)(5)(B). This provision is not intended to modify whatever
8 procedure may be established in an e-discovery order that provides for production
9 without prior privilege review. Pursuant to *Federal Rule of Evidence* 502(d) and
10 (e), insofar as the parties reach an agreement on the effect of disclosure of a
11 communication or information covered by the attorney-client privilege or work
12 product protection, the parties may incorporate their agreement in a subsequent
13 stipulation to the court.

14 **XIV. MISCELLANEOUS**

15 14.1 Right to Further Relief. Nothing in this Order abridges the right of any
16 person to seek its modification by the Court in the future.

17 14.2 Right to Assert Other Objections. By stipulating to the entry of this
18 Order, no Party waives any right it otherwise would have to object to disclosing or
19 producing any information or item on any ground not addressed in this Order.
20 Similarly, no Party waives any right to object on any ground to use in evidence of
21 any of the material covered by this Order.

22 14.3 Filing Protected Material. A Party that seeks to file under seal any
23 Protected Material must comply with Local Civil Rule 79-5. Protected Material
24 may only be filed under seal pursuant to a court order authorizing the sealing of the
25 specific Protected Material at issue. If a Party's request to file Protected Material
26 under seal is denied by the court, then the Receiving Party may file the information
27 in the public record unless otherwise instructed by the court.

28 **XV. FINAL DISPOSITION**

1 After the final disposition of this Action, as defined in Section VI, *supra*,
2 within 60 days of a written request by the Designating Party, each Receiving Party
3 must return all Protected Material to the Producing Party or destroy such material.
4 As used in this subdivision, “all Protected Material” includes all copies, abstracts,
5 compilations, summaries, and any other format reproducing or capturing any of the
6 Protected Material. Whether the Protected Material is returned or destroyed, the
7 Receiving Party must submit a written certification to the Producing Party (and, if
8 not the same person or entity, to the Designating Party) by the 60 day deadline that
9 (1) identifies (by category, where appropriate) all the Protected Material that was
10 returned or destroyed and (2) affirms that the Receiving Party has not retained any
11 copies, abstracts, compilations, summaries or any other format reproducing or
12 capturing any of the Protected Material. Notwithstanding this provision, Counsel
13 are entitled to retain an archival copy of all pleadings, motion papers, trial,
14 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
15 and trial exhibits, expert reports, attorney work product, and consultant and expert
16 work product, even if such materials contain Protected Material. Any such archival
17 copies that contain or constitute Protected Material remain subject to this Order as
18 set forth in Section VI, *supra*.


19 **XVI. VIOLATION**

20 Any violation of this Order may be punished by appropriate measures
21 including, without limitation, contempt proceedings and/or monetary sanctions.

22 IT IS SO ORDERED.

23
24
25 DATED: July 23, 2019

By



HONORABLE KENLY KIYA KATO
United States Magistrate Judge

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under
5 penalty of perjury that I have read in its entirety and understand the Stipulated
6 Protective Order that was issued by the United States District Court for the Central
7 District of California on [date] in the case of *Hoessli v. County of San Bernardino,*
8 *et al.*, Case No. 5:18-cv-1232- JLS. I agree to comply with and to be bound by all
9 the terms of this Stipulated Protective Order and I understand and acknowledge that
10 failure to so comply could expose me to sanctions and punishment in the nature of
11 contempt. I solemnly promise that I will not disclose in any manner any
12 information or item that is subject to this Stipulated Protective Order to any person
13 or entity except in strict compliance with the provisions of this Order. I further
14 agree to submit to the jurisdiction of the United States District Court for the Central
15 District of California for enforcing the terms of this Stipulated Protective Order,
16 even if such enforcement proceedings occur after termination of this action. I
17 hereby appoint _____ [print or type full name] of
18 _____ [print or type full address and
19 telephone number] as my California agent for service of process in connection with
20 this action or any proceedings related to enforcement of this Stipulated Protective
21 Order. Date: _____ City and State where
22 sworn and signed: _____

23
24 Printed name: _____

25
26 Signature: _____